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*Coles Jersey Development Co., LLC.*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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TEXAS EASTERN TRANSMISSION, LP,  
A limited partnership of the State of  
Delaware,

Plaintiff,

v.

0.077 Acres of Land, More or Less, in the  
City of Jersey City, Hudson County, New  
Jersey; COLES JERSEY DEVELOPMENT  
CO., LLC; OGDEN REALTY CO., JANE  
AND JOHN DOES 1 through 50 (fictitious  
name defendants); and ABC BUSINESS  
ENTITIES 1 through 50 (fictitious name  
defendants),

Defendants.

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Civil Action No. 2:14-cv-00167-SRC-CLW

**AFFIDAVIT OF  
DANIEL GANS**

I, Daniel Gans, depose and state as follows:

1. I am the Chief Executive Officer of Hoboken Brownstone Company  
("Hoboken").

2. In April of 2013, Hoboken signed a purchase and sales agreement with Ogden Realty Co. (“Ogden Realty”) to purchase certain property from Ogden Realty in Jersey City, Hudson County, New Jersey, including the Property that is the subject of this condemnation action.

3. I was aware that in June of 2012 Texas Eastern Transmission, LP (“Texas Eastern”) had taken under its eminent domain power a permit for a natural gas pipeline that was to be installed under a part of the property that was to be purchased.

4. In or about March 2013, Hoboken was first alerted by our contacts at Spectra Energy, local contractor for Texas Eastern, that Spectra Energy (“Spectra”) had not included a 3,500 sq. ft. portion at the westerly edge of our Northwestern block in their FERC permit.

5. I was told that this portion, approximately 0.077 acres, was not included because Spectra believed that New Jersey Transit Corporation was the property owner, not Ogden Realty.

6. Spectra explained to me that the 0.077 acres had not been included in the original condemnation because they believed that the property owner was New Jersey Transit Corporation. Spectra further explained that the piece of property could not be condemned because it was not within the area authorized in the FERC permit and to amend the FERC permit would be too costly and time consuming.

7. Further, I was told that the original condemnation agreement between Plaintiff and Ogden Realty for Lot 13 did not include Lot 7.

8. On July 1, 2013, I received an email from Michael J. Ash, attorney at Decotiism Fitzpatrick & Cole LLP, counsel for Spectra, following up on a conversation we had regarding Ogden Realty’s title to Lot 7.

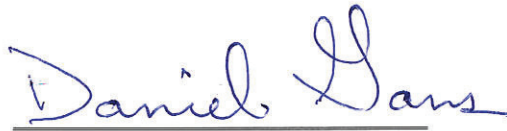
9. Attached to this email was a memorandum from W.H. Fricke, in-house title employee at Spectra Energy, to Michael J. Ash regarding title to an additional portion of Block 6005, Lot 7. Attached to this Affidavit is a copy of that memorandum.

10. Based on the information provided in this email that Ogden Realty Co. was in fact the property owner of Block 6005, Lot 7, I provided this memorandum to Coles Jersey's title company to include Lot 7 in its coverage.

11. Hoboken later decided not to proceed with the purchase of the Property from Ogden Realty and instead Defendant Coles Jersey purchased the Property that was to be Lots 7 and 13, including the property to be condemned. Prior to the sale on July 3, 2013, neither Coles Jersey nor Hoboken reached a resolution of the inclusion of the 0.077 acres.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 10, 2014

  
Daniel Gans

## **EXHIBIT 1**

**From:** "Michael J. Ash" <MAsh@decotiislaw.com>  
**Date:** Monday, July 1, 2013 9:30 AM  
**To:** Daniel Gans <dgans@hbrownstone.com>  
**Cc:** "Simmons, WD D" <WDSimmons@spectraenergy.com>  
**Subject:** Ogden Title Memo

Per our conversation, attached please find a memo re: title for an additional portion of Block 6005, Lot 7, Jersey City. The attached plat is provided to illustrate the analysis in the memo. While the research and analysis in the memo are thorough, Texas Eastern makes no representations as to the accuracy of the title opinions therein. It is our intention to share this analysis with you to review with your title company who will provide the conclusive title opinion on the ownership of "Parcel X".

Please do not hesitate to contact me should you have any questions.

-Mike Ash

**DECOTIIS**  
DeCotiis, FitzPatrick & Cole, LLP

**Michael J. Ash, Esquire**  
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Thank you very much.*



## MEMORANDUM

**To: Michael Ash, Esq.**

**From: W. H. Fricke**

**Re: Title Revision – HUD-98.3 (Ogden) and HUD-98.2 (NJ Transit)**

**Date: 3/7/13**

Our surveyors discovered a discrepancy between the lot lines as shown on the Jersey City Tax Map and as shown and described on plans and underlying deeds relating to HUD-98.3 (Ogden Realty Co.). A portion of the land shown on the Tax Maps and our alignment sheets as owned by NJ Transit (HUD-98.2) was included in deeds to Ogden's abutting land. For purposes of research and this memo, I refer to the gore as "Parcel X." The new boundaries are shown in blue on marked-up plat LD-A-1077, attached.

I researched the boundaries of the Ogden tract from 1910 to date at the Hudson County Registry of Deeds and in our title files for HUD-98.1, HUD-98.2 and HUD-98.3. Parcel X has been part of the Ogden tract for over 100 years. Metes and bounds descriptions in every deed in the HUD-98.3 chain of title include it as part of the land conveyed.

During the course of the research three matters were disclosed which support the boundary between Parcel X and land now owned by NJ Transit as shown:

1) There was an ancient road ("Harsimus Road") at the north end of Parcel X. Matt Mills advised that there was a spur track running to that road from the north. The 1894 Tax Maps show large tracts of railroad land to the north and west of Parcel X, but land inside of it and to the east is shown as subdivided city lots. Thus, there is good evidence for treatment of Parcel X as separate from land lying to the north.

2) Parcel X is shown on the tax maps as part of Block 332. The conveyance of Block 332 land by Conrail to NJ Transit in 1982 (recorded in 1983 in Book 3397, Page 515) does not include Parcel X; rather, it is bounded on the south by a 9.13' property line with the abutting land "N/F Ogden Realty". That is consistent with both the location of a portion of the north line of Parcel X and with the name of the then-record owner (Ogden).

3) The error in the Tax Map (elongating Block 332 to include Parcel X) appears to have arisen from misinterpretation of a deed from Conrail to NJ Transit recorded in Book 4950, Page 275. A poorly-reproduced plan attached to that deed does not clearly show the easterly or southerly lines of Parcel R214D, which abuts Parcel X to the west. The legal description in the deed incorrectly states that Parcel R214D is bounded "on the south by the northerly line of 17<sup>th</sup> Street; and on the west by the easterly line of Monmouth Street." It appears that the assessors interpreted this to mean that Block 332 extended to the intersection of 17<sup>th</sup> and Monmouth Streets and redrew and elongated Block 332 to incorporate the area of Parcel X.

